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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAVOTNAE GOLDSBY, AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

vs.

ADECCO, INC, and DOES 1 through 100, inclusive,

Defendants.

No. CV-07-5604 MMC

**PLAINTIFF SHAVOTNE GOLDSBY'S
SUPPLEMENTAL BRIEF PER THE
SEPTEMBER 2, 2008, ORDER OF
THE COURT**

This Court has the authority to limit communications between litigants and putative class members prior to class certification, subject to restrictions mandated by the First Amendment.

Gulf Oil Co. v. Bernard, 452 U.S. 89, 100, 101 S. Ct. 2193 (1981). Pre-certification

1 communications to potential class members by both parties are generally permitted, and also
2 considered to constitute constitutionally protected speech. As such, any limitations on pre-
3 certification communications between parties and potential class members must be based on a
4 clear record and specific findings that reflect a weighing of the need for a limitation and the
5 potential interference with the rights of the parties. Mevorah v. Wells Fargo Home Mortg., 2005
6 U.S. Dist. LEXIS 28615, 2005 WL 4813532, 3 (N.D.Cal.). "To the extent that the district court is
7 empowered ... to restrict certain communications in order to prevent frustration of the policies of
8 Rule 23, it may not exercise the power without a *specific record showing by the moving party of*
9 *the particular abuses by which it is threatened.*" Burrell v. Crown Cent. Petroleum, Inc., 176
10 F.R.D. 239, 244 (E.D. Tex. 1997), citing Gulf Oil, 452 U.S. at 102 (emphasis in original). "It is
11 not enough that a potentially coercive situation exists. ... The court cannot issue an order without
12 evidence that a potential for serious abuse exists." Burrell, 176 F.R.D. at 244 (emphasis in
13 original).

14 The Court's August 5, 2008, Order limited communications between Plaintiff's counsel
15 and putative class members. The Court prohibited direct communications between Plaintiff's
16 counsel and putative class members initiated by Plaintiff's counsel. Neither Plaintiff nor
17 Defendant Adecco requested this restriction. No evidence was presented of any abuse or
18 misconduct by Plaintiff's counsel, historical or threatened, particular or generalized.

19 No such record exists, nor can exist. Plaintiff's counsel has conducted itself in a proper
20 manner at all times during the course of this litigation, and will continue to do so.

21 Accordingly, Plaintiff respectfully request an order removing communication restrictions
22 between Plaintiff's counsel and putative class members as set forth in the Court's August 5, 2008,
23 Order.

24 Date: September 11, 2008

QUALLS & WORKMAN, L.L.P.

25 By: 
26 _____

Daniel H. Qualls
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